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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JUSTIN T. et al., Persons Coming
Under the Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOHN M.,

Defendant and Appellant.

B292332

(Los Angeles County
Super. Ct. No. 18CCJP03927A-B)

APPEAL from orders of the Superior Court of Los Angeles
County, Danette J. Gomez, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

John M. (father), father of Justin T. and Justice T., appeals from jurisdictional and dispositional orders of the juvenile court entered pursuant to Welfare and Institutions Code¹ sections 300 and 361. Father's sole contention on appeal is that the juvenile court abused its discretion by ordering that he drug test if there were a suspicion he was under the influence of drugs while caring for his children. We find no abuse of discretion, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Petition and Detention

Justin (born in April 2013) and Justice (born in July 2014) are the children of father and Briana T. (mother). In June 2018, when the children were five and three years old, the Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition alleging that father physically abused mother (a-1, b-3); mother had a history of mental and emotional problems, including a diagnosis of bipolar disorder, which rendered her unable to care for the children (b-1, j-1); and father had a history of mental and emotional problems, including auditory hallucinations, which rendered him unable to care for the children (b-2). An amended petition added allegations that the parents were frequent users of marijuana.

¹ All subsequent undesignated statutory references are to the Welfare and Institutions Code.

The children were detained from the parents and placed with the maternal grandmother.

B. Evidence of Father's Drug Use and Mental Illness

The parents have a history of domestic violence, which included a May 25, 2018 incident in which father punched and choked mother, causing her to lose consciousness. Father was arrested, but was released from jail on June 6, 2018.

Mother reported that father called her while he was in jail and told her God wanted him to “sacrifice the kids.” When he was released, mother picked him up from jail and they smoked marijuana together. Father then drove to an industrial part of town, took off his shirt and shoes, started yelling, and told mother she had only so many days to submit to him before he killed her. The next morning, mother and father smoked more marijuana together, and father rubbed a small white rock he referred to as “Novocain” on his gums. Mother and father then picked up the children and took them to a baseball game, where father had a physical altercation with another man. The next day, father “snapped,” telling mother that “‘God sent him here to kill and God told him to sacrifice the kids.’” The paternal grandmother called for help, and father was hospitalized pursuant to section 5150.

Mother told DCFS she was concerned about father's mental health and drug use. The maternal grandmother said she believed father was smoking crack and was mentally ill. She said, “When [father] started talking to me at Court (Children's Court), I just started crying. He doesn't sound like himself. I just thought to myself, ‘This man has lost his mind.’ He was talking about God and what God was telling him to do. God speaks to people, but not the way John was saying God was talking to him.

He made it sound like God was telling him what to do and that he had a ‘good’ voice and a ‘bad’ voice, and they were balancing each other out.”

In August 2018, father said he had been diagnosed with bipolar disorder. He denied any substance abuse, but said he smoked marijuana every three hours.

C. Jurisdiction and Disposition Orders

At the jurisdictional and dispositional hearings, held August 22 and 23, 2018, the juvenile court sustained counts alleging that the parents’ domestic violence and mental illness interfered with their ability to care for the children, but dismissed counts concerning the parents’ marijuana use. The court explained: “The court . . . refer[s] to the evidence . . . regarding father’s hallucinations in reference to God and indicating that God wanted him to kill his children. These are very disturbing statements that obviously point to mental and emotional problems, and . . . mother also demonstrates the same issues. The court feels that they are both using marijuana to self-medicate and soothe themselves from their mental and emotional problems that they need medication for. [¶] However, the court does not see a nexus . . . between the parents['] use of marijuana and any risk of harm to the children.”

With regard to disposition, the court ordered the children removed from the parents, and ordered the parents to complete a variety of programs, including a psychological assessment and mental health counseling for father, before reunifying with the children. DCFS and the children’s counsel requested that father also be ordered to drug test and to complete a drug abuse program if he missed tests or tested positive for drug use; father’s counsel objected. After hearing argument, the court ordered

father to drug test upon suspicion by DCFS that he was under the influence of drugs while caring for the children. The court explained that its order “doesn’t mean that [he is] going to be ordered into a full drug program. It just means that [he’s] going to be ordered to test. We’ll get the results, and we’ll assess it from there.”

Father timely appealed from the jurisdictional and dispositional orders.

DISCUSSION

Father’s sole contention on appeal is that the juvenile court abused its discretion by ordering him to drug test. For the reasons that follow, we do not agree.²

At the dispositional hearing, the juvenile court must order child welfare services for the child and the child’s parents to facilitate reunification of the family. (§ 361.5, subd. (a).) The court has broad discretion to determine what would best serve and protect the child’s interest, and we will not reverse a dispositional order absent a clear abuse of discretion. (*In re J.P.* (2017) 14 Cal.App.5th 616, 624; *In re A.E.* (2008) 168 Cal.App.4th 1, 4.)

When fashioning a dispositional order, the juvenile court may make “all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child” and, further, may “direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings

² We reject DCFS’s contention that father forfeited the right to challenge the juvenile court’s drug-testing order. In our view, counsel’s statement that father “object[ed] to testing at this time” was sufficient to preserve the objection.

under this chapter as the court deems necessary and proper to carry out this section.” (§ 362, subds. (a), (d).) The juvenile court “is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the children. [Citations.] Instead, the court may consider the evidence as a whole.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.)

Thus, in *In re Briana V.*, *supra*, 236 Cal.App.4th 297, the Court of Appeal held that the juvenile court had not abused its discretion by ordering the father to complete sexual abuse counseling, even though *physical* abuse, not sexual abuse, precipitated DCFS’s involvement with the family. The court noted that although there was no evidence that the father had sexually abused his daughters, he had a prior conviction for rape and was a registered sex offender. (*Id.* at pp. 300–301, 307.) Under these circumstances, the Court of Appeal said, “we cannot say that the juvenile court’s order requiring father to attend sexual abuse counseling was beyond the bounds of reason.” (*Id.* at p. 312.)

The court similarly concluded in *In re Christopher H.* (1996) 50 Cal.App.4th 1001. There, the juvenile court dismissed an allegation that the father’s alcohol abuse had placed his child at risk of harm, but it nonetheless ordered the father to submit to drug and alcohol testing as a condition of reunification. The father challenged the order, urging that the drug or alcohol testing condition imposed was beyond the court’s jurisdiction since the court found unproven the allegation that the father’s alcohol-related problems negatively affected his ability to care for the child. (*Id.* at p. 1006.) The Court of Appeal disagreed and affirmed. It explained: “ “[A] reunification plan formulated to

correct certain parental deficiencies need not *necessarily* address other types of conduct, equally deleterious to the well-being of a child, but which had not arisen at the time the original plan was formulated.”’ [Citation.] However, when the court is aware of other deficiencies that impede the parent’s ability to reunify with his child, the court *may* address them in the reunification plan.” (*Id.* at p. 1008, some italics added.) In *Christopher H.*, there was abundant evidence that the father abused methamphetamines and drove while under the influence; thus, the juvenile court “would have been remiss if it failed to address [the father’s] substance abuse even though that problem had not yet affected his ability to care for [his child].” (*Ibid.*)

In the present case, there was substantial evidence father used drugs: The maternal grandmother said she suspected father was using crack cocaine; mother told DCFS that father rubbed a small white rock he referred to as “Novocain” on his gums, and that she and father smoked marijuana together; and father admitted smoking marijuana regularly. There also was abundant evidence of father’s violent and erratic behavior, including physically attacking mother and threatening to harm the children. On this record, the juvenile court did not abuse its discretion by ordering father to drug test *if* (and only if) DCFS had reason to suspect he was under the influence of drugs while caring for his very young children.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.